

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RICHARD REES, et.al,

Plaintiff,

vs.

SOUZA'S MILK TRANSPORTATION,
CO., et al.,

Defendants.

CASE NO. CV-F-05-00297 AWI LJO

**ORDER REQUESTING FURTHER
BRIEFING AND VACATING HEARING**

By notice filed on February 2, 2006, Plaintiffs Richard Rees and Robert Winters move for Findings and Recommendations certifying two classes based on alleged unlawful actions under the Fair Labor Standards Act and the California Unfair Business Practices Act.

The Court requires further briefing of the issues. In particular, the evidence before the Court demonstrates that the proposed truckers are covered by a collective bargaining agreement which provides for overtime compensation when the trucker works 60 hours or more. The parties did not brief whether the existence of the collective bargaining agreement, pursuant to the National Labor Relations Act, impacts the claims under the Fair Labor Standards Act. In other words, does the National Labor Relations Act "trump" the Fair Labor Standards Act in such a situation? In addition, does the existence of the collective bargaining agreement alter the proposed class definition?

The second issue is the timeliness of the filing of the motion. Plaintiff should address good cause for failing to file the motion according to the deadlines established in the Court's preliminary scheduling

1 order. Defendant should address its prejudice and potential sanctions for plaintiffs' failure to comply.

2 The parties shall file their supplemental briefs no later than March 17, 2006.

3 The Hearing set for March 10, 2006 is VACATED. The Court intends to take the motion under
4 submission, and will schedule oral argument should the Court require further argument on the issues.

5 IT IS SO ORDERED.

6 **Dated: March 2, 2006**
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/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE